IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No. 3231 to 3236 of 2001

For Approval and Signature:

HONOURABLE MR.JUSTICE AKIL KURESHI

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1 Whether Reporters of Local Papers may be allowed to see the judgment ?

2 To be referred to the Reporter or not ?

3 Whether their Lordships wish to see the fair copy of the judgment ?

4 Whether this case involves a substantial question of law as to the interpretation of the constitution of India, 1950 or any order made thereunder ?

5 Whether it is to be circulated to the civil judge ?

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DEPUTY EXECUTIVE ENGINEER & 1 - Petitioner(s)

Versus

VIJAY K RATHOD - Respondent(s)

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Appearance :

MR RC JANI for Petitioner(s) : 1 - 2.
MR PH PATHAK for Respondent(s) : 1,

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CORAM : HONOURABLE MR.JUSTICE AKIL KURESHI

Date : 10/10/2005

ORAL JUDGMENT

1. In this group of petitions, the petitioners employer have challenged the legality of common award dated 18th October, 2000 passed by Labour Court, Junagadh by which the reference No. 57/92, 58/92, 60/92, 64/2, 65/92 and

66/92 filed by the respective workmen came to be allowed partially.

2. It is not in dispute that the concerned workmen who are respondents in this group of petitions were engaged by the petitioners and their services were terminated on 16/8/1991. Respondents, therefore, challenged their termination before Labour Court, Junagadh by filing proper references. While partially allowing the references, Labour Court declared the termination of the workmen dated 16/8/1991 as illegal. Their terminations were quashed, workmen were ordered to be reinstated in service with 50% back wages.

3. In the impugned award the Labour Court considered the contention of the workers that their termination were opposed to the provisions of Section 25 F, G and H of the Industrial Disputes Act. Labour Court took notice of the contention of the workmen that the workmen had filed petition before the Gujarat High Court for their regularisation and, therefore, their services were terminated, whereas persons junior to them such as Shri Gaurang Buch, Rupchand, Nisar Imtihas, Nitin Bhimji, Jaysukh Rajani were continued. The workmen had contented

that they had worked for more than 240 days during the relevant period of 12 calender months prior to their termination. They also contented that those persons who withdrew their petitions from the High Court they have been continued in service. Workmen contended before the Labour Court that the employer maintains muster rolls and service registers. They filed application Exh. 9 for production of such documents. Employers, however did not produce such documents. In the cross-examination witness for the employers stated that the they had maintained muster rolls, salary register etc and the same will be produced. However, till disposal of the references no such documents were produced.

3.1 Labour Court, therefore, concluded that the contention of the workmen that they had completed more than 240 days is to be accepted. Labour Court found that termination of the workmen was without following procedure of Section 25 F of the Industrial Disputes Act. Labour Court also accepted the contention of the workmen that their juniors are retained thereby violating Section 25-H of the Industrial Disputes Act.

3.2 Labour Court did not accept the contention of the

petitioners regarding fixed term appointment of the workmen observing that such fact had not been proved by producing documentary evidence. Labour Court however observed that the opponent has also not stated as to for which fixed work the workman were engaged upon completion of which work their services were terminated.

3.3 Labour Court also accepted the allegation that since workmen had approached the High Court for regularisation of their services they were terminated. Notings that those workmen who withdrew such petitions were taken in service and continued also, whereas since the concerned workmen did not withdraw the case filed before the High Court they were terminated without issuance of notice or paying notice pay. Labour Court also noted that no seniority list was published.

3.4 In view of these conclusions Labour Court found that the termination of the workmen were opposed to provisions of Section 25 F, G and H of the Industrial Disputes Act.

3.5 Labour Court, therefore, declared their termination illegal, directing the reinstatement of the workmen. Labour Court however provided for 50% back wages

considering that they must have earned some wages during the intervening period.

4. Learned advocate Mr. Jani sought to assail the award passed by the Labour Court mainly on the ground that the workmen were engaged for fixed work on fixed term basis and on completion of such work which was 100% aided by the Government their services were terminated which cannot be termed as illegal within the meaning of Section 25-F of the Industrial Disputes Act. In support of his contention, learned advocate Mr. Jani placed reliance on the decision of learned Single Judge of this Court in case of **Purshottambhai R. Kachhadia vs. State of Gujarat & Ors. Reported in 2000 (1) GLH 553**. In the said case learned Single Judge observed that appointments for a fixed period by giving breaks by terminating the contract of employment would be covered under Section 2(oo)(bb) of the Industrial Disputes Act. In the present case however, Labour Court noticed that no documentary evidence is produced to establish that the workmen were engaged for a fixed term and for a particular contract upon completion of which their services were liable to be terminated.

4.1 Reliance is also placed on the decision of the learned Single Judge in the case of **Karjan Municipality vs. Shashikant Kamalakar Shukla reported in 2004 (3) GLH 23,** wherein also learned Judge upheld the termination of the workmen who were appointed for a specific period and who were terminated without following provisions of Section 25-F of the Industrial Disputes Act. For obvious factual difference ratio laid down in this decision also would not apply to the present case.

4.2 On the other hand in the decision **of S.M. Nilajkar and Ors. vs. Telecom District Manager, Karnataka reported in (2203) 4 SCC 27**, the Hon'ble Supreme Court observed as follows:

"13. the termination of service of a workman engaged in a scheme or project may not amount to retrenchment within the meaning of sub-clause (bb) subject to the following conditions being satisfied:

(i)that the workman was employed in project or scheme of temporary duration;
(ii)the employment was on a contract, and not as a daily-wager simpliciter, which provided inter alia that the employment shall come to an end on the expiry of the scheme or project;
(iii)the employment came to an end simultaneously with the termination of the scheme or project and consistently with the terms of the contract; and
(iv)the workman ought to have been apprised or made aware of the above said terms by the employer at the commencement of employment.

> 14.The engagement of a workman as a daily-wager does not by itself amount to putting the workman on notice that he was being engaged in a scheme or project which was to last only for a particular length of time or up to the occurrence of some event, and therefore, the workman ought to know that his employment was short-lived. The contract of employment consciously entered into by the workman with the employer would result in a notice to the workman on the date of the commencement of the employment itself that his employment was short-lived and as per the terms of the contract the same was liable to termination on the expiry of the contract and the scheme or project coming to an end. The workman may not therefore complain that by the act of the employer his employment was coming to an abrupt termination. To exclude the termination of a scheme or project employee from the definition of retrenchment it is for the employer to prove the above said ingredients so as to attract the applicability of sub-clause (bb) above said. In the case at hand, the respondent employer has failed in alleging and proving the ingredients of sub-clause (bb), as stated hereinabove. All that has been proved is that the appellants were engaged as casual workers or daily-wagers in a project. For want of proof attracting applicability of sub-clause (bb), it has to be held that the termination of the services of the appellants amounted to retrenchment".

5. In the present case as noted earlier the Labour Court came to a specific conclusion that no evidence was produced by the employer to establish that the workmen were employed for a fixed term or against a specific project. Their services could not have been terminated without following provisions of Section 25-F of the Industrial Disputes Act since the Labour Court had concluded as a matter of fact that they had completed

more than 240 days during the relevant period. Learned advocate for the petitioners was unable to dislodge this factual finding of the Labour Court. Thus, on record there was no evidence to demonstrate that the workers were engaged for a fixed term or against a particular project upon completion of which they were liable to be terminated. As noted, Labour Court also held that they had established having worked for more than 240 days. The petitioners had not produced any material such as muster rolls, attendance register, and other relevant documents before the Labour Court though called upon. Considering all these aspects of the matter, I see no illegality having been committed by the Labour Court.

5.1 Additionally Labour Court also concluded that the petitioners had singled out the workers for such harsh treatment simply because they had filed a petition before the High Court claiming regularisation of their services. No material has been pointed out to dislodge the findings of the Labour Court that persons junior to the workers concerned were retained in service and that those workers who agreed to withdraw their case from High Court were not terminated and continued whereas the respondents herein were terminated since they showed their dis-

inclination to withdraw the petition.

6. Considering all these aspects of the matter, I do not find that the Labour Court committed any jurisdictional error calling for interference from the High Court in exercise of power under Article 226 and 227 of the Constitution of India. Regarding back wages also Labour court in exercise of discretionary powers granted 50% back wages though there was no direct evidence of gainful employment of the workers during the intervening period. In this regard also, therefore, no interference is called for.

7. In the result petitions fail and are hereby rejected. Rule is discharged with no order as to costs. Interim relief also stands vacated.

(Akil Kureshi, J.)

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